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May 21, 2010

Nancy H. Sutley

722 Jackson Place Northwest
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**Re: Draft NEPA Guidance on Consideration of the Effects of Climate Change
and Greenhouse Gas Emissions**

Dear Nancy Sutley,

On behalf of the over 175,000 members of the National Association of Home Builders (NAHB), I respectfully submit these comments in response to the *Draft Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions*, as published in the *Federal Register* on February 18, 2010. In particular, NAHB is troubled by the breadth of activities that may be impacted by the requirement to address greenhouse gas (GHG) emissions and CEQ's failure to place appropriate boundaries or limits on the study of overall climate change impacts. Although most of our members' projects are not large enough to place them within the reach of the National Environmental Policy Act (NEPA), because of the growing interest and reliance on NEPA at the state and local levels, coupled with the uncertainties associated with climate change science, NAHB is extremely concerned with the direct and indirect implications this policy will have on the residential construction industry.

NAHB's membership consists of individuals and firms who not only develop land and construct single and multifamily homes, but complete light commercial projects as well. While the bulk of our members' projects fall below NEPA thresholds, some of them are conducted as part of larger projects or developments that must comply with NEPA's mandates or are large enough themselves to require the preparation of an Environmental Assessment or Environmental Impact Statement. As a result, NAHB's members will experience both the direct and indirect impacts of any revision to the NEPA scope or process. Although NAHB's members are committed to environmental protection and regularly take steps to minimize the effect of their projects on natural resources, oftentimes well-intentioned policies and actions by regulatory agencies result in plans and programs that fail to strike the proper balance between conservation goals and needed

economic growth. In these instances, our members are faced with increased costs attributed to project mitigation, delay, modification, or even termination. We are concerned that, given today's economy, the proposed guidance will have significant negative impacts on the ability of our members to provide safe, decent and affordable housing.

Today's draft guidance is intended to identify when and how federal agencies must consider the impacts of proposed federal actions on global climate change. Unfortunately, it fails to provide sufficient detail as to when such study is necessary, which produces uncertainty; provides inappropriately wide latitude to the action agencies to determine how to demonstrate and document impacts, which leads to inconsistent application and confusion; and provides few procedural suggestions or criteria for how such studies should be evaluated, which produces inconsistent outcomes. Finally, because many states use the NEPA program as a backdrop for their individual state environmental programs, NAHB is concerned that the additional climate change considerations will further encumber and confuse an already challenging process.

While NAHB understands CEQ's desire to incorporate consideration of climate change impacts and mitigation strategies into the agency decision making processes, implementing guidance and regulation without accurately assessing the potential climate change impacts associated with the numerous categories of projects will result in undue burden to industries whose projects typically result in negligible carbon footprints. Without provisions that effectively limit the universe of projects that must comply with the climate change study requirements, Federal agencies and the regulated community will be adversely impacted unnecessarily. NAHB's observations and suggestions are below.

a. *Overall Comments*

The utility of today's draft document is questionable because it provides little direction for Federal agencies to take when implementing climate change considerations into the NEPA process. Instead, this document provides an ambiguous set of agency recommendations that leaves a significant amount of room for differing interpretations. Any final guidance document on climate change considerations in the NEPA process must provide better detail outlining specific information that must be collected, specific triggers and thresholds that must be reached in order to trigger an Environmental Analysis (EA), other factors that may also trigger an EA, limited flexibility to discourage variation in programmatic implementation and exemptions for projects with de minimis impacts. In order to most

effectively present this information, NAHB recommends utilizing a flow chart to exemplify to both agencies and project proponents who is responsible for implementation and what is to be expected of the implementation process. Other possibilities include drafting a set of criteria that must be met in each phase (e.g. which projects meet the threshold, what information must be included, how information will be evaluated) and/or specifying the steps that agencies and project proponents must take.

b. *“No Dominating GHG Emission Sources”*

On the second page of the introduction, CEQ states: *“Because climate change is a global problem that results from global GHG emissions, there are more sources and actions emitting GHGs (in terms of both absolute numbers and types) than are typically encountered when evaluating the emissions of other pollutants. From a quantitative perspective, there are no dominating sources and fewer sources that would even be close to dominating total GHG emissions.”* NAHB is concerned that the section does not adequately explain this statement. While it may be difficult to identify one plant or project that can qualify as a major source of GHG emissions generalizations based on industry type can be modeled and their contributions determined. Several entities have diligently worked to categorize the sectors that are most responsible and influential in the release of GHG gases. While GHG emissions are disseminated across atmospheric streams and therefore difficult to quantify, the ability to trace quantitative emissions from various sources is scientifically possible. To assume that there are no dominating GHG emission sources can be misinterpreted and rather than focusing on major contributors, agencies will instead consider all contributors equally. This assumption and position has the ability to cause small sources and projects that contribute insignificant amounts to be subjected unnecessarily to environmental assessments only to be exempted after a lengthy review. NAHB urges CEQ to clarify which sources are likely to be covered and provide definitive categorical exclusions to those that are not to prevent undue burden to not only small entities, but to those entities contributing negligible emissions.

c. *Purpose*

The purpose of this guidance is to develop a baseline to identify and develop GHG evaluation strategies on all projects subject to NEPA. While seemingly reasonable, on page 3 of the draft CEQ states *“Many agency NEPA analyses to date have found that GHG emissions from an individual agency action have small potential effects. Emissions from many proposed Federal actions would not typically be expected to produce an*

environmental effect that would trigger or otherwise require a detailed discussion in an EIS.” If CEQ has found that most projects provide negligible GHG emission contributions, it is unclear as to the need for new agency behaviors and additional documentation associated with the implementation of this guidance document. GHG evaluation guidance should be developed and enforced for only those projects providing significant contributions of GHG emissions. Developing a baseline of GHG evaluation strategies for projects that emit inconsequential amounts of emissions may become an unnecessary strain on agency resources. In light of CEQ’s own statements regarding the likelihood of a project falling under NEPA review, NAHB recommends CEQ reevaluate the need for this guidance and the generalities encompassed within and instead focus a more concise document geared specifically toward those entities that are known to provide significant amounts of GHG emissions.

d. *Projects Emitting Less than 25,000 Metric Tons of CO₂-Equivalent Annually*

Today’s draft guidance generally suggests all project proponents for projects emitting 25,000 metric tons of CO₂ or more should complete environmental analysis and perform the required tasks under NEPA. Because the 25,000 ton limit is merely a suggestion (CEQ also suggests that the review be conducted for any quantities that the agency finds may be meaningful), NAHB is concerned that this guidance will encourage agencies to require an in-depth NEPA analysis for projects emitting less than 25,000 metric tons of CO₂-equivalent annually. The lack of any real limits on who must perform an analysis will result in additional regulatory burdens and oversight for most projects subject to NEPA. For example, if a permittee had to consider the mobile source contributions associated with a federal construction project during the time of construction, each vehicle used during to the construction process would have to have its vehicle miles traveled (VMT) quantified and translated into emissions contributed. NAHB strongly recommends CEQ revisit the language used in this guidance and either remove the language allowing the analysis of project emitting less than 25,000 metric tons of CO₂, or provide specific examples of projects that should be subject to this rule despite falling below the minimum threshold.

e. *Revisions based upon the Environmental Protection Agency (EPA) Changes to its Mandatory Reporting Rule*

On Thursday May 13, 2010 EPA released its final Tailoring Rule entitled: *Prevention of Significant Deterioration and Title V Greenhouse Gas*

*Tailoring Rule*¹, which requires all projects that increase net GHG emissions by at least 75,000 tons per year (tpy) carbon dioxide equivalent (CO₂e), to obtain a prevention of significant deterioration (PSD) permit. This final rule targets source owners proposing to construct new major emission sources and/or modify existing major sources in such a way that would increase GHG emissions. This final rule was designed to ensure that smaller projects, businesses and contributors would not be subjected to the same degree of oversight as those significant GHG contributors or burdened with the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions require.

In the absence of Congressional oversight, all Federal agencies and entities must work to provide consistent and interchangeable level of expectations and thresholds for triggering GHG emission reduction strategies. In the wake of EPA's decision to increase the threshold to 75,000 tpy CO₂e, NAHB encourages CEQ to follow suit and amend its draft climate change guidance to better emulate the decisions and actions made by EPA. Amending this draft guidance to increase the threshold to at least 75,000 tpy CO₂e as the trigger threshold for NEPA analysis would provide consistency and clarity. Modifications to this draft guidance must also include stricter exemptions for smaller projects, as is also addressed in EPA's Tailoring Rule. Exempting smaller sources will eliminate excessive regulatory burdens for projects emitting insignificant amounts of GHG emissions.

f. *Unintended Overextension of GHG Evaluations*

Federal agencies follow NEPA policy and programmatic requirements in all of their decision making processes when actions may impact the environment. While NEPA specifically targets federal approvals of significant projects, there is a strong likelihood that the requirements set out within this guidance document will be incorporated into other federal, state and local programs. NAHB is concerned that the sweeping nature of today's draft guidance will result in additional regulatory burden for federal permitting programs such as EPA's National Pollution Elimination Discharge System (NPDES) program. While not currently subject to climate change requirements, were EPA and other federal agencies to begin to include provisions as described in today's guidance into their permitting programs, the regulated community would be saddled with implementation of GHG reduction programs on projects that emit considerably less than 25,000 metric tons of CO₂-equivalent annually.

This concern bleeds into state and local programs as well. NEPA policy

¹ EPA-HQ-OAR-2009-0517. <http://www.epa.gov/NSR/documents/20100413final.pdf>

and programmatic requirements are often incorporated into state and local environmental programs. For example, California, Washington state and Massachusetts all have State Environmental Protection Acts (SEPA) that mirror, in many respects, the federal program. While these same states have been progressive in beginning to address the impact of climate change and GHG emissions in their states, they have not taken the extreme steps advised in today's guidance, but their transfer will be unavoidable. As such, it is imperative that CEQ provide clear guidelines and limitations. Discrepancies and information gaps in this guidance will cause unnecessary delays when implemented and can be easily remedied through the adoption of specific criteria, exemptions, and/or categorical exclusions.

g. Land Management Activities and Climate Change

Land management activities, unlike most projects and activities that are subject to NEPA analyses, are composed of a complex set of variables. These variables, while separately evaluated and modeled, have not been fully vetted and evaluated. Any attempts at establishing a Federal protocol to address and mitigate theorized GHG contributions from land management practices must first begin with CEQ and Federal agencies researching and understanding the full scope of land management practices and policies. NAHB recommends that CEQ and the Federal Agencies conduct research on land management and climate change, and conduct a series of stakeholder meetings to obtain a better grasp at the intricacies. Once a full grasp of the techniques are compiled and all participants identified and studied, only then should CEQ begin crafting GHG evaluation and mitigation guidance for this sector.

At a minimum, land management policies must include adaptive management components. Adaptive management allows for programmatic flexibility that can adapt to changing environmental, economic and social variables that will not only better protect the environment, but will also promote innovation. Adaptive management techniques will provide the flexibility needed to promote enhanced energy efficiency products, lower GHG emitting technology, renewable energy and carbon sequestration programs. Flexible policies and programs will allow agencies to review and tweak requirements so that they continue to adjust while encouraging voluntary innovation and proactive behavior.

Thank you for consideration of our comments. NAHB strongly recommends CEQ review EPA's Tailoring Rule and other available research prior to finalizing climate change guidance. Targeting industries emitting over 75,000 tons of CO₂ will fall in line with EPA's determination and will better

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target major contributors of GHG emissions. Modifying this guidance to target significant contributors will alleviate unnecessary burden on both Federal agencies and smaller entities that may be inadvertently subject to the provisions presented today. Please do not hesitate to contact me at Larissa Mark at (202) 266-8157 if you have any questions or would like to discuss any of our recommendations.

Best regards,

Larissa Mark

Larissa Mark
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